

## SENATE BILL No. 115

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-21-10; IC 8-22-3-14.

**Synopsis:** Zoning for land uses adjacent to airports. Allows an airport authority board, after consulting with the local zoning authority, to adopt an ordinance establishing an overlay zoning district for a noise sensitive area: (1) to promote aviation safety; or (2) to provide for land uses within the noise sensitive area that are compatible with and support airport operations. Makes a technical correction.

**Effective:** July 1, 2007.

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**Drozda**

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January 8, 2007, read first time and referred to Committee on Commerce, Public Policy & Interstate Cooperation.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## SENATE BILL No. 115

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-21-10-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. As used in this  
3 chapter:

4 "Department" refers to the Indiana department of transportation.  
5 "Noise sensitive area" means an area lying one thousand five  
6 hundred (1,500) feet on either side of:  
7 (1) the centerline of; and  
8 (2) the extended centerline of;  
9 a runway, for a distance of one (1) nautical mile from the  
10 boundaries of any public use airport.

11 "Noise sensitive purpose" means the use of a building or structure  
12 as a residence, school, church, child care facility, medical facility,  
13 retirement home, or nursing home.

14 "Permit" means a permit issued by the department under this  
15 chapter.

16 "Person" means any individual, firm, partnership, corporation,  
17 company, limited liability company, association, joint stock



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association, or body politic, including any trustee, receiver, assignee, or other similar representative.

"Public use airport" means any area, site, or location, either on land, water, or upon any building, which is specifically adapted and maintained for the landing and taking off of aircraft, and utilized or to be utilized in the interest of the public for such purposes. The term does not include:

- (1) any private use airport or landing field; or
- (2) any military airport solely occupied by any federal branch of government using that airport for military air purposes.

"Structure" means any object constructed or installed by man, including, but not limited to, cranes, buildings, towers, smokestacks, electronic transmission or receiving towers, buildings used for a noise sensitive purpose, and antennae and overhead transmission lines.

SECTION 2. IC 8-21-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) Unless a permit has been issued by the department, a person may not erect, alter, or add to the height of any structure which falls within any one (1) of the following categories:

- (1) Any construction or alteration of more than two hundred (200) feet above ground level at its site.
- (2) Any construction or alteration of greater height than an imaginary surface extending outward and upward at one (1) of the following slopes:
  - (A) One hundred (100) to one (1) for a horizontal distance of twenty thousand (20,000) feet from the nearest point of the nearest runway of any public use airport with at least one (1) runway more than three thousand two hundred (3,200) feet in actual length, excluding heliports.
  - (B) Fifty (50) to one (1) for a horizontal distance of ten thousand (10,000) feet from the nearest point of the nearest runway of any public use airport with its longest runway no more than three thousand two hundred (3,200) feet in actual length, excluding heliports.
  - (C) Twenty-five (25) to one (1) for a horizontal distance of five thousand (5,000) feet from the nearest point of the nearest landing and takeoff area of any public use heliport.
- (3) Any construction or alteration of traverse ways used, or to be used, for the passage of mobile objects if the standards set forth under subdivisions (1) and (2) would be exceeded, but only after the heights of these traverse ways are increased by:
  - (A) Seventeen (17) feet for an interstate highway where

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overcrossings are designed for a minimum of seventeen (17) feet vertical distance.

(B) Fifteen (15) feet for any other public roadway.

(C) Ten (10) feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road.

(D) Twenty-three (23) feet for a railroad.

(E) For a waterway or any other traversed way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

(b) Unless:

(1) a permit for construction in a noise sensitive area has been approved by the department;

(2) the holder of a permit for construction in a noise sensitive area has filed a copy of the permit for construction in a noise sensitive area with the county recorder of the county in which the structure is located, as provided in subsection ~~(d)~~; **(f)**; and

(3) a certified copy of the recorded permit for construction in a noise sensitive area, with the recording data from the county recorder on the copy of the permit, has been received by the department;

a person may not erect a building used for a noise sensitive purpose within ~~an area lying one thousand five hundred (1,500) feet on either side of the centerline and the extended centerline of a runway for a distance of one (1) nautical mile from the boundaries of any public use airport:~~ **a noise sensitive area.**

(c) A person applying for a permit under subsection (a) must provide notice, at the time of the filing of the application for a permit, to the owner of a public use airport located within a five (5) nautical mile radius surrounding the structure, regardless of county lines, if the structure that is the subject of the permit is:

(1) a new structure; or

(2) an existing structure to which additional height is added.

(d) A person applying for a permit for construction in a noise sensitive area under subsection (b) must provide notice, at the time of the filing of the application for a permit, to the owner of a public use airport if the public use airport is located within a distance of one (1) nautical mile from the boundary of the property that contains the building used for a noise sensitive purpose.

(e) Notice under subsections (c) and (d) must be sent by certified or registered mail, with return receipt requested, and must include the:

(1) name, telephone number, and a contact person for the:

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- 1 (A) applicant;  
 2 (B) department; and  
 3 (C) plan commission that has jurisdiction over the site of the  
 4 structure;  
 5 (2) location of the structure, including a legal description;  
 6 (3) height of the structure; and  
 7 (4) Federal Aviation Administration aeronautical study number  
 8 assigned to the application, if applicable to the type of permit for  
 9 which notice is required.  
 10 (f) The applicant for a permit under subsection (b) shall record each  
 11 permit issued by the department in the office of the county recorder for  
 12 the county where the structure is located, not later than five (5)  
 13 business days after the department issues the permit. If a structure is  
 14 located in more than one (1) county, the county that contains the  
 15 majority of the structure is the county in which the permit must be  
 16 filed.  
 17 (g) A permit issued under subsection (b) is valid only after the  
 18 department receives a certified copy of the recorded permit with the  
 19 recording data from the county recorder of the county in which the  
 20 structure is located.  
 21 (h) A permit issued under subsection (b) must contain the following  
 22 statement:  
 23 "The permittee acknowledges for itself, its heirs, its successors,  
 24 and its assigns, that the real estate described in this permit  
 25 experiences or may experience significant levels of aircraft  
 26 operations, and that the permittee is erecting a building designed  
 27 for noise sensitive use upon the real estate, with the full  
 28 knowledge and acceptance of the aircraft operations as well as  
 29 any effects resulting from the aircraft operations."  
 30 (i) An applicant for a permit under subsection (a) must provide  
 31 written evidence to the department that the structure being constructed  
 32 does not violate section 7 of this chapter with regard to an existing  
 33 public use airport, if a public use airport is located within a five (5)  
 34 nautical mile radius surrounding the structure that is the subject of the  
 35 permit.  
 36 (j) Unless a denial of permit is issued by the department, a  
 37 Determination of No Hazard to Air Navigation from the Federal  
 38 Aviation Administration is a permit under this section, and a separate  
 39 permit will not be issued by the department.  
 40 SECTION 3. IC 8-22-3-14 IS AMENDED TO READ AS  
 41 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14. (a) In order to  
 42 provide free air space for the safe descent and ascent of aircraft and for

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the proper and safe use of an airport or landing field acquired or maintained under this chapter, the board may establish by ordinance or ordinances a restricted zone or zones of a distance in any direction from the boundaries of the airport or landing field so that no building or other structure is erected high enough to interfere with the descent of an aircraft at an approach angle necessary for safety for the usual type of operation that is conducted at the airport or landing field. If the authority was established under IC 19-6-3 (before its repeal on April 1, 1980), this action is subject to approval by the fiscal body of any eligible entity within or coterminous with the boundaries of the district.

(b) The board may acquire by condemnation or purchase, upon the payment of due compensation, the right to prevent the erection of, and to require the removal of, all buildings, towers, poles, wires, cables, other structures, and trees within the zone or zones that interfere with the gliding angle or as much of any structure or trees that interfere with the gliding angles. When a restricted zone or zones ~~has~~ **have** been established, a permit issued by a department or office of an eligible entity or by any state or other authority for the erection of any structure extending into such zone or zones is effective only if approved by the board. Establishment of a restricted zone or zones outside of an airport or landing field, in connection with the condemnation of the rights in the land, constitutes condemnation and the perpetual annihilation of all rights of the owners of the property within the zone or zones to erect or maintain any building or structure that will interfere with the gliding angle. This result may be accomplished by absolute condemnation of the land, with perpetual and irrevocable free license to use and occupy the land within the zone for all purposes except the erection of buildings or other structures above the height so prescribed.

(c) The part of a restricted zone that extends below fifty (50) feet measured vertically from the land may be established only by purchase or proceedings in eminent domain. That part of a restricted zone that is fifty (50) or more feet above the surface of the land is in effect immediately upon the adoption of a zoning ordinance. However, the owners of land beneath a restricted zone have the right to recover damages that may be proven in an action brought for that purpose. In an action for damages, the owner has the burden of proving damage by reason of the establishment of the restricted zone.

**(d) The board may establish an overlay zoning district within a noise sensitive area (as defined in IC 8-21-10-2):**

**(1) to promote aviation safety; or**

**(2) to provide for land uses within the noise sensitive area (as defined in IC 8-21-10-2) that are compatible with and support**

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1           **airport operations.**

2           **Before the board may adopt an ordinance establishing the overlay**  
 3           **zoning district, the board shall consult with the appropriate local**  
 4           **planning and zoning authority within the board's district.**

5           ~~(d)~~ (e) The zoning jurisdiction granted in this section is exclusive  
 6           against jurisdiction granted by any other statute unless the other statute  
 7           specifically provides otherwise. In case of conflict with any airport  
 8           zoning or other regulations promulgated by an eligible entity, the  
 9           regulations adopted under this section prevail.

10          ~~(e)~~ (f) All airport zoning regulations adopted under this chapter  
 11          must be reasonable and may not impose a requirement or restriction  
 12          that is not reasonably necessary to effectuate the purposes of this  
 13          chapter. In determining what regulations to adopt, the board shall  
 14          consider, among other things, the character of the flying operations  
 15          expected to be conducted at the airport, the nature of the terrain within  
 16          the airport hazard area, the character of the neighborhood, and the uses  
 17          to which the property to be zoned is put and adaptable. However, this  
 18          section does not apply to the location, relocation, erection,  
 19          construction, change, alteration, maintenance, removal, use, or  
 20          enlargement of any buildings or structures on lands owned by a public  
 21          utility or railroad.

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